No. 287.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

JOHN M. KLEIN,
Plaintiff in Error,
vs.
THE CITY OF SEATTLE.

FILED
APR 14 1896

TRANSCRIPT OF RECORD.

In Error to United States Circuit Court, District of Washington, Northern Division.

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Circuit Court of the United States, for the District of Washington, in the Northern Division.

JOHN M. KLEIN, Plaintiff, vs. THE CITY OF SEATTLE, Defendant.	At Law.

Bill of Complaint.

The plaintiff complains against the defendant, and for cause of action respectfully shows to the Court and alleges:

1. That plaintiff is and at all times hereinafter mentioned was a citizen of the United States and of the State of California, residing at San Francisco in said State.

2. That defendant is a municipal corporation duly organized, created and existing under and by virtue of the laws of the State of Washington.

3. That plaintiff was the true, original and first inventor of a certain new and useful apparatus and improvement in pins for electric insulators, and which was not known or used in this country, and not patented or described in any printed publication in this or any foreign country, before plaintiff's invention thereof, and was not in public use or on sale more than two years prior to his application for letters patent of the United States therefor.

4. That heretofore on the 13th day of September, 1881, this plaintiff made application in due form of law for a patent for his said improvement in pins for electric insulators, and on the 20th day of April, 1884, letters patent number 297,699 for said invention, in due form of law,

were issued and delivered to plaintiff in the name of the United States of America, and were signed by the acting Secretary of the Interior of the United States, and countersigned by the Commissioner of Patents; and said letters patent did grant to plaintiff, his heirs, or assigns, for a term of seventeen years, the exclusive right to make, use and vend the said invention throughout the United States and the Territories thereof.

5. That always hitherto, from the time of the issue of said patent and up to the present time, plaintiff has vended to others the right to make and use the said improvement in pins for electric insulators, to his great advantage and profit.

6. That the defendant, well knowing the premises, but contriving to injure the plaintiff, heretofore, on and after the 6th day of June, 1889, and up to the present time, and during and within the term of seventeen years mentioned in said letters patent, and before the bringing of this suit, and within those parts of the United States covered by the last mentioned grant, unlawfully, wrongfully and injuriously, and with intent to deprive the plaintiff of the royalties which he might and otherwise would have derived from the sale of rights to make and use said improvement in pins for electric insulators, and without the license of the plaintiff and against the will of the plaintiff, did make and did use, and did cause to be made and did cause to be used, sundry specimens of said improvement and of apparatus which contained and employed substantially the invention covered by said letters patent, in infringement of said exclusive rights secured to plaintiff as hereinbefore set forth, and contrary to the statute of the United States in such cases made and provided; whereby

the plaintiff has been and is greatly injured, and has been deprived of large royalties which he might and otherwise would have derived from the sale of rights to make and use said invention, and has sustained actual damages thereby to the amount of three thousand dollars.

Wherefore, plaintiff prays judgment against defendant for the sum of three thousand dollars actual damages, and such additional amount not exceeding three times the amount of such actual damages as the Court may see fit to adjudge and order, beside costs of this action.

BYERS, McELWAIN & BYERS,
Att'ys for Plaintiff,
Rooms 21-25, Olympic Block, Seattle, Washington.

State of Washington, }
County of King. } ss.

Alpheus Byers, being first duly sworn, says that he is one of the attorneys for plaintiff in the above-entitled action, and makes this affidavit on behalf of said plaintiff; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true, and that he makes this verification because the said plaintiff is absent from said county of King where this affiant resides.

ALPHEUS BYERS.

Subscribed and sworn to before me this 27th day of Mar., 1894.

OVID A. BYERS,
Notary Public, residing in Seattle in said State.

[Endorsed]: Filed Mar. 29, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.

Summons.

Action brought in the said circuit court, and the complaint filed in the office of the clerk of said circuit court, in the city of Seattle, King county, State of Washington.

The President of the United States of America, Greeting, to the City of Seattle:

You are hereby required to appear in the circuit court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division, at the city of Seattle, within twenty days after the day of service of this summons upon you, and answer the complaint of the above-named plaintiff, now on file in the office of the clerk of said court, a copy of which complaint is herewith delivered to you. And unless you so appear and answer, the plaintiff will apply to the Court for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 29th day of March, in the

year of our Lord one thousand eight hundred and ninety-four, and of our Independence, the 118th.

{ Seal Circuit Court, District of Washington, N. Division. }

A. REEVES AYRES,
Clerk.
By R. M. Hopkins,
Deputy Clerk.

United States,
District of Washington,
State of Washington,
County of King. } ss.

Alpheus Byers, being duly sworn, says that he is a citizen of the United States and of the State of Washington, over the age of twenty-one years, and is competent to be a witness in the trial of the within-entitled action, and that on the 29th day of March, 1894, he served the within summons on the within-named defendant, The City of Seattle, by delivering to Byron Phelps, mayor of said defendant, at his office in the city of Seattle in King county, State of Washington, in said district, a certified copy thereof, together with a copy of the complaint, certified to by the attorneys for the plaintiff in said cause attached thereto.

ALPHEUS BYERS.

Subscribed and sworn to before me this 29th day of March, 1894.

[Notarial Seal] OVID A. BYERS,
Notary Public, residing in Seattle in said State.

[Endorsed]: Summons. Filed March 29, 1894. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

United States Circuit Court, for the District of Washington.

JOHN M. KLEIN,
vs.
CITY OF SEATTLE.

Præcipe for Appearance.

To the Clerk of the above-entitled court:

You will please enter our appearance as attorneys for the plaintiff in the above-entitled cause.

BYERS, McELWAIN & BYERS.

[Endorsed]: Praecipe for Appearance. Filed Mar. 29, 1894. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

United States Circuit Court, for the District of Washington.

JOHN M. KLEIN,
vs.
CITY OF SEATTLE.

Præcipe for Appearance.

To the Clerk of the above-entitled court:

You will please enter our appearance as attorneys for The City of Seattle, defendant in the above-entitled cause.

W. T. SCOTT.
FRANK A. STEELE.

[Endorsed]: Praecipe for Appearance. Filed May 31, 1894. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.
No. 368.

Amended Answer.

Comes now the defendant, The City of Seattle, and for its amended answer to the complaint of John M. Klein, the plaintiff, says:

I.

That it has no knowledge or information sufficient to form a belief as to whether the facts alleged in the first paragraph of plaintiff's complaint are true or not, and therefore denies the allegations in the first paragraph of said complaint contained.

II.

That the defendant admits the allegations of the second paragraph of plaintiff's complaint.

III.

That defendant denies specifically and generally each and every allegation contained in the third paragraph of plaintiff's complaint.

IV.

For answer to the fourth paragraph of plaintiff's complaint the defendant says that it has no knowledge or information sufficient to form a belief as to whether the facts in said paragraph stated are true or not, and therefore, the defendant denies specifically and generally each and every allegation in said paragraph contained.

V.

That defendant denies the allegations of the fifth paragraph of plaintiff's complaint.

VI.

The defendant denies the allegations of the sixth paragraph of plaintiff's complaint, and each of them, specifically and generally.

Further answering the plaintiff's complaint, and as a first affirmative defense, defendant alleges:

I.

That the plaintiff, John M. Klein, has never stamped or marked, nor caused to be stamped or marked, as patented, any such device as by him in the complaint in this action alleged to have been patented, and as therein set forth, so as to give notice to the public or to this defendant that the said device was patented, as in said complaint alleged; nor has he ever affixed or caused to be affixed to any package, wherein one or more of said alleged patented devices were inclosed, any mark or label containing any notice whatever that the said device was

patented as alleged in said complaint, or in any other manner; and that the plaintiff has never notified defendant of any infringement on its part of the device so claimed by the plaintiff to be patented; nor has the defendant ever had any notice that any such device as described in plaintiff's complaint is now or has heretofore ever been patented, except for the allegations of the complaint in this action; and all electric insulator pins of whatever kind or character as now are used, or at any time heretofore have been used, by The City of Seattle, were used without any knowledge or information from any source of any character whatsoever that any pin so used had ever been patented by the plaintiff, or by any person whomsoever, and the defendant never had any knowledge or information of any such claim on the part of this plaintiff or any other person, until about the time of the institution of this action.

Further answering plaintiff's complaint and as a second affirmative defense, the defendant, The City of Seattle, alleges:

I.

That on or about the 14th day of August, 1889, the defendant, The City of Seattle, duly and regularly entered into a contract with the California Electrical Works, a corporation of San Francisco, California, whereby the California Electrical Works agreed to erect, install and put in operation in the city of Seattle, an electric fire alarm system, with all connections, apparatus and appliances, for the use of which, when completed and in operation, The City of Seattle was to pay the sum of two hundred ($200) dollars per month, with the privilege of pur-

chasing the said fire alarm system, within the time in said contract provided, for the sum of eight thousand two hundred and fifty-six ($8,256) dollars; that thereafter, for a valuable consideration, the said California Electrical Works duly assigned, transferred and set over to one F. C. Stover all its right, title and interest in and to said contract, and all liabilities thereunder were assumed by said grantee, and thereafter, for a valuable consideration, the said F. C. Stover duly assigned, transferred and set over to the Gamewell Fire Alarm Telegraph Company all his right, title and interest in and to the aforesaid contract, and the said Gamewell Fire Alarm Telegraph Company assumed all of the obligations of said contract.

II.

That thereafter the said Gamewell Fire Alarm Telegraph Company entered upon the discharge of the obligations of said contract, and erected, installed and put in operation an electric fire alarm system in the city of Seattle, as provided in said contract.

III.

That all apparatus, materials, supplies and every article of whatsoever nature connected with the establishment and operation of said system, were purchased, made and established by the said Gamewell Fire Alarm Telegraph Company, including all pins for electric insulators used in supporting and carrying the electrical wires of said system.

IV.

That thereafter, under the terms of said contract, The City of Seattle purchased of the Gamewell Fire Alarm

Telegraph Company the said electric fire alarm system so by said company installed and established.

V.

That on or about the first day of September, 1891, The City of Seattle, the defendant, duly and regularly entered into a contract with the Police Telephone and Signal Company, a corporation, whereby the said corporation was to erect, install and put in operation an electric police telephone and signal system in the city of Seattle, for which system, when so installed and put in operation under the terms and conditions of said contract, The City of Seattle was to pay to said corporation the sum of seven thousand nine hundred and twenty-five ($7,925) dollars, and that under said contract all materials, supplies, appliances and apparatus necessary for the construction of said system were to be purchased, made and directed by said Police Telephone and Signal Company, including all pins for electric insulators used in carrying the electric wires of said system.

VI.

That in accordance with said contract the said Police Telephone and Signal Company did erect, establish and put in operation within the city of Seattle an electric police telephone and signal system, for which, when so completed and in operation, the defendant, The City of Seattle, paid the sum of seven thousand nine hundred and twenty-five ($7,925) dollars.

VII.

That all pins for electric insulators used in said system were purchased by said company from John M. Klein,

the plaintiff in this action, through F. C. Stover, the agent of said company.

VIII.

That The City of Seattle is not now using, nor has at any time past used, made, or caused to be used or made, any pins for electric insulators of any kind or character, other than the pins for electric insulators established by the two several corporations and companies aforesaid, in erecting and establishing the electric fire alarm system and the said electric police telephone and signal system; and all such pins for electric insulators which are now, or at any time in the past have been, in use in either of said systems were purchased or made by the two several companies aforesaid at their own instance, and used by said companies in establishing the said system so purchased thereafter by the defendant, as hereinbefore set out.

Further answering the plaintiff's complaint and by way of affirmative defenses thereto, the defendant alleges:

I.

That for the purpose of deceiving the public the description and specifications filed by the alleged patentee, John M. Klein, in the patent office of the United States were made to contain more than is necessary to produce the desired effect.

II.

That the device which is alleged to have been patented was described in a printed publication prior to the supposed invention or discovery thereof by the alleged patentee, John M. Klein.

III.

That the alleged patentee, John M. Klein, was not the original and first inventor or discoverer of any material or substantial part of the thing patented.

IV.

That the alleged patented device has been in public use and on sale in this country for more than two years before the application for a patent by the plaintiff, and abandoned to the public.

WILLIAM T. SCOTT & FRANK A. STEELE,
Attorneys for Defendant.

State of Washington, }
County of King. } ss.

Byron Phelps, being first duly sworn, on oath says, that he is the Mayor of the City of Seattle, the defendant named in the foregoing amended answer, that he has heard the same read, knows the contents thereof, and believes the same to be true; that he makes this affidavit because said city is a municipal corporation and affiant is its mayor.

BYRON PHELPS.

Subscribed and sworn to before me this —— day of July, A. D. 1894.

[Notarial Seal] J. A. PAINE,
Notary Public in and for the State of Washington, residing at Seattle in said County and State.

Due service of the within proposed amended answer on

the undersigned, this 18th day of July, 1894, is hereby admitted.

BYERS, McELWAIN & BYERS,
Attorneys for Pl'ff.

[Endorsed]: Amended Answer. Filed July 26, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

In the Circuit Court of the United States. Ninth Circuit, District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.

Reply to Amended Answer.

Now comes the above-named plaintiff, and for reply to the answer of the defendant herein:

1. Denies each and every allegation contained in the first affirmative defense of said answer.

2. Denies each and every allegation contained in the second affirmative defense of said answer.

3. Denies each and every allegation contained in the remainder of defendant's said answer.

Wherefore, plaintiff prays judgment against said defendant as in his complaint herein.

BYERS, McELWAIN & BYERS,
Attorneys for Plaintiff.

State of Washington, }
County of King. } ss.

Alpheus Byers, being first duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing reply, knows the contents thereof and believes the same to be true; and that he makes this verification because the said plaintiff is absent from said county of King, where resides this affiant.

ALPHEUS BYERS.

Subscribed and sworn to before this 26th day of July, 1894.

OVID A. BYERS,

Notary Public, residing in Seattle of said State.

Service of a copy of within reply to amended answer is hereby admitted this 27th day of July, 1894.

W. T. SCOTT & FRANK A. STEELE,
Att'ys for Deft.

[Endorsed]: Reply to Amended Answer. Filed Aug. 2, 1894, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

United States Circuit Court, District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.
} Aug. 31, 1894.

A. Byers, Attorney for Plaintiff.

W. T. Scott & Frank A. Steele, Attorneys for Defendant.

Opinion.

HANFORD, District Judge. (Orally.)

This is an action brought by the plaintiff against the city to recover damages for infringement of letters patent No. 297,699 granted to the plaintiff for an improvement in pins for holding insulators supporting electric wires. What is claimed by the application and to be considered as protected by the patent is a pin of iron or steel of suitable size and length, with an enlarged head of lead, or any soft metal upon it, with a thread to fit the inside of glass insulators, which are made with a spiral groove for screwing on to a screw head. The heads are cast upon the ends of pins by running molten lead into a mold while the end of a pin is held therein; a firm union of the lead to the iron is secured by notching the pin end, or making it rough with a chisel. These pins are designed to be used in connection with glass insulators in common use. No particular kind of insulator is required,

and the insulator is not part of the combination which the plaintiff claims as his invention. The kind of pins most commonly used are wooden pins with a thread on the end to hold the insulator; but wooden pins are objectionable because they cannot be made of sufficient strength without being of a size that unfits them for use in many places. For instance they cannot be set into arms upon telegraph and telephone poles without requiring either very large arms or making the arms in common use too weak. In all places where the wire makes an angle, a wooden pin must be of considerable thickness to be strong enough to support the wire and bear the strain that is necessary. Iron pins were in use for such purposes a long time before the plaintiff in this case claims to have conceived the idea of this invention, and in order to use them in connection with glass insulators, of course some material had to be used to fill the cavity of the insulator, and accordingly a filling of wood, of canvas coated with white lead, and all the different kinds of cement were used. Cement in a plastic state was run into the cavity in which the iron pins were set, and exactly the same method of making the iron pins available, was in use before this invention, except that other materials were used instead of lead. It is also shown by the testimony that lead was used in a different manner. Instead of being molded in proper form, sheet lead was wrapped upon the end of the pin. The evidence shows, and in fact it is a matter of general knowledge, that soft metal has been in common use to fill cavities and unite metals or hard substances for a very long time, so that there is nothing new in the use of this kind of material for this purpose. The manner of

making an iron pin adhere to soft metal by notching it or roughing it is not new. There is no invention in that, for that principle has been long applied in many ways. In principle it is the same as the key commonly used for securing a wheel upon a central shaft, so that both will make the same revolutions.

Now, all that can be claimed as the invention in this case is the combination consisting of the use of iron in place of wood for a pin, and lead in place of rags, wood or cement for a filling; and the process of making a firm union of the lead head and the iron pin; and it is my opinion that there is nothing in this that amounts to an invention. It seems to me that any person of intelligence directed to take an iron pin and a glass insulator and insert one in the other and make a firm union between the two, would discover that this was obviously a good method for doing that very thing.

The plaintiff has cited several cases to show that in matters of similar character, the fact that an improvement is found to be of such general utility as to cause the improved article to go immediately into general use and supplant all other methods, is proof of an invention. But the proof here is that wooden pins are still in use, and this new contrivance has only been used to a limited extent, and that there is no such special utility in it, that it has supplanted the old methods.

The policy of the law is to reward inventors by giving them, for a limited time, the fruit of their productions. But mere improvements produced by the use, in a usual manner, of previously known instruments, from materials in general use, without application of any new principle, do not entitle their authors to monopolies. Every

day work in shops and on farms makes necessity for many contrivances; and when a farmer fixes up a broken harness by his own peculiar method, or makes an improvement in the operation of agricultural implements, or when a mechanic adapts his tools to the creation of an article required to suit the ideas of a customer the results are not patentable inventions. The patent laws cannot be so construed as to restrict ingenuity in the common employment of the people without becoming intolerably burdensome rather than beneficial. Hollister v. Benedict Manufacturing Company, 113 U. S. 59.

In my consideration of the testimony in this case I have read the depositions, and I have concluded to overrule one and all of the objections that are noted.

The other defenses in this case are in my opinion unavailable under the pleadings. I think the different defenses that have been discussed in this case should have been set forth fully and with greater particularity in the answer to enable the defendant to take any advantage of them. For instance, that the patent was anticipated by actual use is something that should have been pleaded, or before the trial notice should have been given specifying when and by whom and where the patented article was in use. The rules for defending against patents on this ground are somewhat rigid, but they are just, and it is my duty to enforce them. I shall find against the defendant on all grounds except as already indicated, but I hold the patent to be void for want of originality, and therefore find for the defendant.

C. H. HANFORD,
Judge.

[Endorsed]: Opinion. Filed August 31st, 1894. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

In the United States Circuit Court, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs. No. 368.
THE CITY OF SEATTLE,
Defendant.

Findings of Fact and Conclusions of Law.

Be it remembered that the above-entitled cause came on regularly to be heard in the above-entitled court before the Hon. C. H. Hanford, Circuit Judge, the plaintiff appearing by his attorneys and the defendant by its attorneys.

The parties, by stipulation in writing, duly signed by them and filed with the clerk before the commencement of the trial of the said cause, each severally waived a jury.

Whereupon the cause was submitted and taken up by the Court for trial without a jury.

Witnesses were sworn and examined on behalf of the plaintiff and defendant, depositions and other documentary evidence submitted to the Court by each of the said parties, and the Court having heard the evidence and the argument of counsel, makes the following findings of fact and conclusions of law, to-wit:

Findings of Fact.

I.

That the plaintiff, John M. Klein, is and was at the commencement of this action, a citizen of the United States and a resident and citizen of the city and county of San Francisco and State of California.

II.

That the defendant, The City of Seattle, is and was at the commencement of this action, a municipal corporation, organized and existing under and by virtue of the laws of the State of Washington.

III.

On and for a long time prior and subsequent to September 13th, 1881, glass insulators, screw-threads on inside, were in common use in this country in electrical appliances, such as telegraphy, &c.

IV.

These insulators were and now are used for the purpose of attaching thereto the wires over which the electrical currents are conducted.

V.

These glass insulators were and are used by attaching the same to pins, which pins are attached to cross-arms, and which cross-arms are attached to poles or other objects, and these form the means of conducting electrical currents either in telegraphy or in cities having fire alarms or police telegraph system.

VI.

The pins mentioned above which were first used were ordinary screw wooden pins, upon which screw insulators were attached, such wooden pins were attached to cross-arms by boring a hole in the cross-arms and placing therein the opposite end of the wooden pin.

VII.

Wooden pins were for some places and purposes found objectionable, unsatisfactory and defective. 1. They were weak and would not support long spans without being of such size as to weaken the cross-arm, which in that case would not support the long span. 2. In running the wire up and down steep inclines, they would in wet weather make a short "circuit" with the edge of the "petticoat" and "ground" the current. 3. They afforded no method for overhead attachment. 4. In lines where a slight interruption might cause great damage they were considered too unreliable. 5. In places difficult of access (such as steeples, towers, etc.) and in out of the way places, such as over mountains and sparcely settled communities, the fact that they lasted but a comparatively short time rendered them undesirable. A sample of the ordinary wooden pin hereinabove mentioned was offered in evidence on the trial of this cause and is marked "Defendant's Exhibit 1," and there is attached thereto a "double-petticoat insulator" hereinabove referred to.

VIII.

For the purpose of remedying the objections above stated to the wooden pin, numerous experiments were

made by numerous persons prior to September 13th, 1881. Among the instruments devised and employed for remedying these objections there was prepared and used an iron pin smaller in circumference and otherwise than the wooden pin, to which iron pin there was attached a wooden screw-head, to which the insulator was attached in the same manner as the same was attached to the wooden pin. This wooden screw-head was attached to the iron pin by boring a hole through the wooden screw-head and running the iron pin through the same. A sample of this pin was offered in evidence and has been marked in this case "Defendant's Exhibit 14."

IX.

Another device manufactured and used for remedying the defects in the wooden pin was by taking a piece of wood and driving the same into the glass insulator and boring the hole in the wood and forcing the iron pin therein—in other words the wood was used as a bushing. A sample of this pin was offered in evidence and marked "Plaintiff's Exhibit 1," and also "Defendant's Exhibit 2."

X.

Other pins were also used which were made by using as bushing or filling, plaster of paris, cement, rags, white-lead and sheet lead, etc. All of these pins were found objectionable for the reason that the insulator could not be detached therefrom without removing the pin from the cross-arm, or other object, and furthermore, in moving the insulator from the pin the filling was liable to become broken, and also were found faulty when the same had to be placed in a downward or vertical position, for the rea-

son that the bushing did not secure or firmly hold the insulator to the rod, as well as being difficult and laborious to remove the insulator from the bushing, and in instances where the insulators were broken it was found difficult and even impossible to fix other insulators to the bushing.

XI.

Another device for remedying the objections to the wooden pin was an iron pin with an iron screw-head to which the insulator was attached. It was found that the insulator would not fit so exactly and satisfactorily upon the iron screw-head as upon the lead screw-head hereinafter mentioned, used in the Klein pin, and also the insulator was liable to be broken in screwing or fastening the same to the iron screw-head.

A sample of such iron screw-head pin was offered in evidence and marked "Defendant's Exhibit 15" and "Defendant's Exhibit 2."

XII.

Plaintiff conceived the idea of making a mould in which was cased a leaden screw-head or thread, to be attached to the head of an iron pin, and when so attached, to be used for the purpose of attaching the glass insulator. For the purpose of making the leaden screw-head attach firmly and securely to the iron pin, said iron pin was by said Klein roughed with a cold chisel, and he then also conceived the idea of casting the lead screw-head onto the iron pin, i. e. the iron pin was set in a mould and the molten lead poured therein, so that the screw-head became firmly attached to the iron pin and at the same time a screw-head was formed, through which when necessary, the insulator could be removed by unscrewing the same.

XIII.

On September 13th, 1881, plaintiff John M. Klein applied, as by law provided, for a patent for the said pin for electrical insulators, and on the 29th day of April, 1884, there was issued by the United States of America, in the manner and form as by law provided, letters patent, to said Klein for said pins for electrical insulators for the term of seventeen years from the 29th day of April, 1884, which letters patent granted unto him the exclusive right to make, use, and vend the said invention throughout the United States and Territories thereof for the said period of seventeen years. The specifications which formed part of the letters patent issued to the said Klein as aforesaid are as follows:

"To all whom it may concern:

"Be it known that I, John M. Klein, of the city and county of San Francisco, in the State of California, have invented and made a new and useful 'Supporting-pin for Telegraph Insulators'; and I do hereby declare that the following is a full, clear and exact description of my said invention, reference being had to the accompanying drawings.

"My invention relates to an improved pin or support for fixing and holding in place the glass insulators upon cross-arms of telegraph poles, and in other situations where an insulator support or attachment is required for an electric wire.

"As hereinafter more fully described, my improvement consists in providing an insulator-pin of metal, having a head of larger diameter than the body of the pin, on which

is a screw-thread or portion of a thread of proper size to be inserted into, and to engage with the screw socket in the insulator.

"Referring to the accompanying drawings, Figure 1 represents the manner of securing glass insulators in place upon a pole by means of my invention. Fig. 2 is a view of the pin or support in detail, with the cap or insulator glass in section. Fig. 3 is a view of the pin.

"A represents a glass insulator of the kind generally employed on telegraph poles and other situations to afford points of support for electric wires, in which is a socket with a spiral thread or groove for fastening it upon its pin. To provide a strong and permanent supporting pin, I take a length of metal rod, preferably of wrought iron, and upon one end I form a head, *b*, of greater diameter than the body of the rod, and of a size to be received into the socket or opening in the class A. This head *b* is provided with a spiral thread or groove, *c*, to engage with the thread in the socket of the glass, and this forms the means by which the insulator is secured on the pin. The other end of the pin, B, has either a screw-thread, *d*, cut upon it, so that it can be screwed into the arm or other support on the pole or elsewhere, or this end is left plain to be driven into a hole made to receive it in the cross-arm or other fixture. Where this pin will have an upright position, as on the top side of a cross-arm, it can be readily driven into the wood; but in situations where the screw-fastening would be preferable the end of the rod can have the screw, *d*, cut on it. In such case the body of the pin, B, may have a square or flat position, as in Fig. 3, to receive a wrench.

"To form the head or enlarge position *b*, that receives and holds the glass A, I can proceed in several ways; but

the simplest and least expensive method, I have found, is to place the end of the rod B, within a suitable mold, and then pouring in the molten metal around it, the mold employed for this purpose having a groove or thread in its interior, so that the head, when formed, shall be similarly grooved or threaded to fit into the socket of the glass A.

"A very cheap and ready means of forming the head is to use solder lead, and in such case the glass insulator itself could be used as a mold, the end of the pin B being held in the center of the socket in the glass, while the molten metal is being poured in around it. The soft metal will then form a head around and on the end of the hard metal pin, and the glass can be readily removed by unscrewing from the end of the pin.

"By forming an enlarged head in this manner upon the end of the pin, I can adapt my improved pin to the form and style of the insulator now in general use, having a socket to receive the end of the supporting pin.

"The advantages possessed by my improved pin are very great. It requires only a small hole in securing it to a cross-arm or other part of a pole, so that the part is not weakened at the point of fixture to as great an extent as where the wooden pins are used. It is out of contact with the inner sides or edges of the glass at the rim, so the insulation is more nearly perfect, and it will stand great weight and strain in supporting long lines, or where the distance between the supporting points are, of necessity, very long and where the weight or strain is excessive, it will bend and not break off."

"Having thus fully described my invention, what I claim and desire to secure by letters patent is

1. The wrought metal pin, B, provided with a soft metal head, *b*, which is grooved and threaded to fit into and engage with the socket in an insulator for supporting electric wires, substantially as set forth.

2. An insulator pin or support for electric insulators, having wrought-metal body and a screw-thread head of larger diameter than the body of the pin, of cast metal, substantially as set forth."

The original letter patent issued to the said Klein and numbered 297,699 was offered in evidence and marked "Plaintiff's Exhibit A." A sample of said patented pin as manufactured by plaintiff was offered in evidence and marked "Plaintiff's Exhibit B."

XIV.

These pins (Klein Pins) were not known or used in this country or any other countries, so far as known by the evidence, and not patented or described in any printed publication in this or any foreign country before the plaintiff's invention thereof, and were not in public use or on sale for two or more than two years prior to plaintiff's said application for his letters patent therefor, as above stated.

XV.

That the said pins patented to the said Klein as aforesaid have been found to be useful for the purpose for which the same were patented and invented, as above stated, and since the date of the issuance of said letters patent have been more commonly used than any other of the said iron pins above mentioned, and have so far supplanted the use of all of the iron pins above mentioned, that none of the other of the said insulating iron pins are

now in the market or being manufactured so far as shown by the testimony.

XVI.

That from the time of the issuance of said letters patent to the plaintiff he has vended to others the right to make and use the said improvement in pins for electrical insulators, to his great advantage and profit, and has sold and vended to the city of Portland, Oregon, and other cities, the pin patented to him as aforesaid, and has also licensed other cities to manufacture and use the said patented pin.

XVII.

That the plaintiff has, from the date of issuance to him of said letters patent given sufficient notice to the public that the said pin is patented, by affixing thereon the word patented, together with the day and year the patent was granted.

XVIII.

That between the month of August, 1889, and the month of January, 1894, defendant, at various times, without license from the plaintiff and against his will, did make and use pins substantially the same as that patented to plaintiff, and was so using the patented pin at the time of the commencement of this action.

XIX.

I further find that all the patents mentioned in the answer and notice of special defenses herein are for insulators only and not for insulating pins, as is the Klein pin, that the Klein pin is wholly for a different thing than that embraced in either of the said patents.

XX.

Molten lead and other soft metals are, and have been used a great number of years prior to September 13th, 1881, as a tie bushing between iron and other hard metals and substances, and the use of lead for such purpose was, for more than ten (10) years prior to September 13th, 1881, a matter of general and common knowledge, and wood, lead, gutta percha, cement, plaster of paris, and rags, etc., have been used for bushing for a long period of time prior to September 13th, 1881.

Each of said exhibits hereinabove referred to is made a part of these findings.

Conclusions of Law.

From the foregoing findings I conclude as follows:

I.

That as the pin in controversy, patented to the plaintiff, consists of the use of iron in the place of wood as in the pin which was in use prior thereto, and in the place of rags, wood, cement, etc. for a filling, which were used prior thereto, and the process of making a firm union of the lead head and the iron pin, there is nothing in plaintiff's patent which amounts to an invention and the same does not involve the application of a new principle; that the pin here in controversy patented to the plaintiff is lacking in patentable novelty, and that the insulator pin in question is merely a mechanical device substituting one well-known equivalent for another to perform the same office in the same way, as hereinbefore stated, and I so con-

clude from a comparison of this patented pin with that of the prior pins in use above mentioned.

II.

That letters patent, issued as aforesaid to John M. Klein, were issued improperly and without lawful authority and are invalid.

III.

That the defendant is entitled to judgment against the plaintiff for its costs and disbursements herein and that they take nothing by his action.

Dated this 29th day of November, A. D. 1895.

C. H. HANFORD,

Judge.

To the above and foregoing conclusions of law and to each thereof, numbered 1, 2 and 3, plaintiff excepts and his exception is hereby allowed to each thereof.

Dated this 29th day of November, 1895.

C. H. HANFORD,

Judge.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Nov. 29, 1895, in the U. S. Circuit Court. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.
No. 368.

Judgment.

This cause came on regularly for trial in the above-entitled court before the judge thereof without the intervention of a jury, a jury having been regularly waived. The parties appeared by their respective counsel. Witnesses were sworn and examined and written and documentary evidence introduced on behalf of each of the parties. The Court having seen and heard the evidence and arguments of counsel and being fully advised as to the law and the facts, and having found the facts and declared its conclusions of law in favor of the defendant,

It is ordered and adjudged by the Court, that the plaintiff, John M. Klein, take nothing by his suit and that the defendant, The City of Seattle, go hence without day and recover of and from the plaintiff, John M. Klein, its costs and disbursements in this behalf expended, taxed at $...... and that execution issue therefor.

Done in open court this 29th day of November, 1895.

To the foregoing judgment plaintiff excepts and his exception is allowed.

C. H. HANFORD,
District Judge.

Dated this 29th day of Nov., 1895.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.
No. 368.

Assignments of Error.

Comes now the said John M. Klein, plaintiff in error in the above-entitled cause, and says:

That in the record and proceedings in the above-entitled matter, there is manifest error, to-wit:

I.

Because the Court erred in the first conclusion of law made and entered herein, which conclusion of law is based upon the findings of fact made and entered in this cause, and is as follows:

"That as the pin in controversy, patented to the plaintiff, consists of the use of iron in place of wood as in the pin which was used prior thereto, and lead in place of rags, wood, cement, &c., for a filling, which were used prior thereto, and the process of making a firm union of the lead head and the iron pin, there is nothing in plaintiff's patent which amounts to an invention and the same did not involve the application of a new principle; that the pin herein in controversy patented to plaintiff, is lacking in patentable novelty, and that the insulator pin in ques-

tion is merely a mechanical device substituting one well-known element or equivalent for another to perform the same office in the same way, as hereinbefore stated, and I so conclude from a comparison of this patented pin with that of the prior pins in use above mentioned."

II.

Because the Court erred in the second conclusion of law made and entered herein, based upon the findings of fact made and entered herein, which second conclusion of law is as follows:

"That letters patent, issued as aforesaid to John M. Klein, were issued improperly and without lawful authority, and are invalid."

III.

Because the Court erred in the third conclusion of law made and entered upon the trial of this action, which third conclusion of law is as follows, viz:

"That the defendant is entitled to judgment against plaintiff for its costs and disbursements herein, and that plaintiff take nothing by his action."

IV.

Because the Court erred in rendering and entering the judgment herein in favor of the defendant and against plaintiff for costs and disbursements herein incurred, and further adjudging that plaintiff take nothing by by his said action, &c., which judgment was entered herein on the —— day of November, 1895.

Wherefore, said John M. Klein, plaintiff in error, prays that the judgment of said Circuit Court of the United

States, for the District of Washington, Northern Division, entered in said cause on the 29th day of November, 1895, be reversed and that the plaintiff in error be granted a new trial in the said cause.

BYERS & BYERS, and
BATTLE & SHIPLEY,
Attorneys for Plaintiff in Error, John M. Klein.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.
No. 368.

Petition for Writ of Error.

To the Honorable Judges of the U. S. Circuit Court, for the District of Washington, Northern Division:

The above-named plaintiff, John M. Klein, conceiving himself aggrieved by the judgment entered herein on the 29th day of November, 1895, and that manifest errors have been made in this cause during the pendency thereof and in said judgment and proceedings, to the great damage of petitioner, as more fully appears by the assignment of errors filed herein by the petitioner;

Wherefore, in order that your petitioner may obtain relief in the premises and that such errors, if any, may be duly corrected and that full and complete justice may be

done to your petitioner, and in order that the same may be passed upon by the Honorable Circuit Court of Appeals, of the Ninth Circuit, your petitioner respectfully prays that he may be allowed a writ of error in said cause, and that said cause may be transmitted to the Honorable Circuit Court of Appeals, for the Ninth Circuit, holding terms at San Francisco, in the State of California, to determine said matters and to pass upon the assignment of errors filed herein by petitioner, and that all proper orders touching security required of petitioner may be made.

BYERS & BYERS, and
BATTLE & SHIPLEY,
Attorneys for Petitioner, John M. Klein.

In the Circuit Court of the United States, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.

Order Allowing Writ of Error.

Upon the filing and hearing of the foregoing petition, it appearing to the Court that the relief therein prayed for is proper to be granted and that the said cause is a proper cause for the allowance of a writ of error, it is therefore by the Court ordered that the prayer of the said petitioner be granted and that the said writ of error be allowed, and

that the said plaintiff, said petitioner, give security as required by law in the sum of $250.00.

Dated this 4th day of January, 1896.

C. H. HANFORD,
Judge.

In the United States Circuit Court, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff in Error,
vs.
CITY OF SEATTLE,
Defendant in Error.
} No. 368.

Bond on Writ of Error.

Know All Men by These Presents, that we, John M. Klein, the plaintiff in error above named, and M. L. Mowry and H. A. Sayles, as sureties, are held and firmly bound unto The City of Seattle, a municipal corporation, the defendant in error above named, in the full sum of two hundred and fifty dollars ($250.00) to be paid to the said City of Seattle, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators or assigns, jointly and severally, firmly by these presents.

Signed by us, with our seals, this eighth day of January, 1896.

The condition of the above obligation is such, that whereas the above-named John M. Klein has taken a writ of error to the U. S. Circuit Court of Appeals, for the

Ninth Circuit, to reverse the judgment rendered in the above-entitled action by the Circuit Court of the United States, for the District of Washington, Northern Division, and the undersigned are desirous of going security on said appeal for the prosecution thereof and for costs, according to the order of the Court in that regard made.

Now, therefore, if the above John M. Klein shall prosecute the said writ of error to effect and answer all costs if he fail to make good said writ of error, then this obligation to be void, otherwise to remain in full force and effect.

JOHN M. KLEIN, [Seal]
Principal.

M. L. MOWRY, [Seal]

H. A. SAYLES, [Seal]

Signed, sealed and delivered in presence of:

T. J. Blackmey,

W. W. Duncan.

State of California, }
City and County of San Francisco. } ss.

On the 8th day of January, A. D., one thousand eight hundred and ninety-six, before me, R. M. Edwards, a notary public in and for the city and county of San Francisco, State of California, residing therein, duly commissioned and qualified, personally appeared M. L. Mowry and H. A. Sayles known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in said city and county

of San Francisco, the day and year in this certificate first above written.

[Seal] R. M. EDWARDS,

Notary Public in and for the City and County of San Francisco, State of California, No. 301 Montgomery Street.

State of California, City and County of San Francisco. } ss.

M. L. Mowry and H. A. Sayles, being duly sworn, each for himself says: That he is a resident of the State of California and is not an attorney or counsellor at law, clerk, sheriff, marshal or other officer of a court of justice, and that he is worth $250.00 over and above all his just debts and liabilities and property exempt from execution.

M. L. MOWRY,
H. A. SAYLES.

Subscribed and sworn to before me this 8th day of January, A. D. 1896.

R. M. EDWARDS,

Notary Public in and for the City and County of San Francisco, State of California.

We agree that the above bond might be approved as a valid and sufficient bond.

W. T. SCOTT & FRANK A. STEELE,
Attys. for Defendant.

Approved by me this 13th day of January, A. D. 1896.

C. H. HANFORD,
Judge.

Writ of Error.

United States of America: ss.

The President of the United States of America to the Judge of the Circuit Court of the United States, for the District of Washington, Northern Division, Ninth Circuit, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between John M. Klein, plaintiff, and The City of Seattle, a municipal corporation, defendant, manifest errors hath happened, to the great damage of said plaintiff, John M. Klein, as by his complaint appears, we being willing that error, if any has been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Circuit Court of Appeals of the United States, for the Ninth Circuit, at the courtroom of said court, at the city of San Francisco, State of California, together with this writ, so that you have the same at the said place before the justices aforesaid within thirty days from this date, that the record and proceedings aforesaid being inspected, the said justices of the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right, and according to the law and custom of the United States, ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty.

[Circuit Court Seal] A. REEVES AYRES,
Clerk of the U. S. Circuit Court, District of Washington,
By R. M. Hopkins, Deputy Clerk.

The above writ of error is hereby allowed this 4th day of January, 1896.

C. H. HANFORD,
District Judge, sitting in Circuit Court, for the District of Washington, Northern Division.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JOHN M. KLEIN,
Plaintiff and Plaintiff in Error,
vs.
CITY OF SEATTLE,
Defendant and Defendant in Error.
} No. ——

Citation.

The United States of America to The City of Seattle, a Municipal Corporation, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty (30) days from the

date hereof, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the State of Washington, Northern Division, said writ of error having been issued out of the United States Circuit Court of Appeals, for the Ninth Circuit, in that certain cause wherein John M. Klein is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment and record in the above-entitled cause in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this 13th day of January, A. D. 1896, and of the Independence of the United States the 120th.

[District Court Seal] C. H. HANFORD,

U. S. District Judge, presiding in the Circuit Court.

Dated January 13th, 1896.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JOHN M. KLEIN,
Plaintiff and Plaintiff in Error,
vs.
CITY OF SEATTLE,
Defendant and Defendant in Error.

Admission of Service of Citation.

We, the undersigned attorneys for the defendant in er-

ror, hereby admit service of the citation in the above-entitled action.

W. T. SCOTT & FRANK A. STEELE,
Attorneys for Defendant in Error.

In the United States Circuit Court, for the District of Washington, Northern Division.

JOHN M KLEIN, Plaintiff, vs. CITY OF SEATTLE, Defendant.	No. 368.

Application for Transmission of Exhibits.

Comes now plaintiff and moves the Court to make and enter herein an order authorizing and directing the clerk to send up, as a part of the transcript on file in this cause, to the Circuit Court of Appeals of the United States, for the Ninth Circuit, all of the original exhibits offered in evidence and mentioned and referred to in the findings of fact made and entered herein, as being necessary and proper for a thorough consideration and review of this case on such appeal.

BYERS & BYERS, and
ALFRED BATTLE,
Attorneys for Pl'ff, John M. Klein.

In the United States Circuit Court, for the District of Washington, Northern Division.

JOHN M. KLEIN,
Plaintiff,
vs.
CITY OF SEATTLE,
Defendant.
} No. 368.

Order Transmitting Exhibits.

On this day came on duly for hearing the application and motion of John M. Klein, plaintiff, asking that the original exhibits mentioned and referred to in the findings of fact made herein, be transmitted by the clerk of this court, on appeal of this cause, to the Circuit Court of Appeals of the United States, for the Ninth Circuit;

And, after duly considering said application, it is hereby ordered, and the clerk of this court is hereby directed to send up as a part of the transcript in this cause, all of the said original exhibits referred to and mentioned in the said findings of fact, as necessary to a proper consideration and review of this case.

Dated this 13th day of January, 1896.

C. H. HANFORD,
Judge

In the Circuit Court of the United States, for the District of Washington.

JOHN M. KLEIN,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.

Clerk's Certificate.

United States of America,
District of Washington. } ss.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States, for the District of Washington, in the Ninth Judicial Circuit, do hereby certify that the foregoing forty-four (44) typewritten pages, numbered from one (1) to forty-four (44) inclusive, to be a full, true and correct transcript of the record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, and I further certify that the cost of preparing and certifying the foregoing transcript is the sum of twenty-eight and 10-100 dollars ($28.10), and that said sum of $28.10 was paid to me by Messrs. Byers & Byers, attorneys for plaintiff (appellant) herein.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said circuit court, this 3rd day of March, A. D. 1896.

[Seal] A. REEVES AYRES,
Clerk United States Circuit Court, for the District of Washington,
By R. M. Hopkins, Deputy Clerk.

[Endorsed]: No. 287. United States Circuit Court of Appeals for the Ninth Circuit. John M. Klein, Plaintiff in Error, vs. The City of Seattle, Defendant in Error. Transcript of Record. In Error to the United States Circuit Court, District of Washington, Northern Division.

Filed March 9th, 1896.

F. D. MONCKTON,
Clerk.